

## United States Postal Service

## § 958.2

### § 957.26 Public information.

The Librarian of the Postal Service shall maintain for public inspection in the Library copies of all final decisions. The Recorder maintains the complete official record of every proceeding.

[36 FR 11574, June 16, 1971, as amended at 63 FR 66051, Dec. 1, 1998]

### § 957.27 Suspension.

(a) Any firm or individual suspended under chapter 3, section 7 of the Postal Service Purchasing Manual who believes that the suspension has not been in accordance with the provisions thereof, or with applicable laws or regulations, may appeal to the Judicial Officer for a review of the suspension.

(b) Any such appeal shall be addressed to the Judicial Officer through the Vice President who ordered the suspension within 20 days of the date upon which the respondent has been notified of the suspension. Such appeal shall concisely and in the manner of a pleading set forth the grounds upon which the suspension is contested and may be supported by a brief and such evidence as the respondent may desire to submit.

(c) Should the respondent desire oral argument or a hearing before the Judicial Officer in connection with the appeal, application therefor shall be included in the appeal. In the event that the Judicial Officer grants the respondent's application for a hearing the notice of suspension and the appeal shall constitute the pleadings defining the issues therein and the hearing shall be regulated in accordance with the rules in this part concerning debarment proceedings.

(d) The decision of the Judicial Officer in any appeal shall constitute the final agency determination of the issues presented thereby. Either party thereto may, however, file a motion for reconsideration thereof, in accordance with the provisions of § 957.22.

[36 FR 11574, June 16, 1971, as amended at 41 FR 19309, May 12, 1976; 63 FR 66051, Dec. 1, 1998]

### § 957.28 Ex parte communications.

The provisions of 5 U.S.C. 551(14), 556(d) and 557(d) prohibiting ex parte

communications are made applicable to proceedings under these rules of practice.

[42 FR 5358, Jan. 28, 1977]

## PART 958—RULES OF PRACTICE IN PROCEEDINGS RELATIVE TO CIVIL PENALTIES, CLEAN-UP COSTS AND DAMAGES FOR VIOLATION OF HAZARDOUS MATERIAL REGULATIONS

Sec.

- 958.1 Purpose.
- 958.2 Definitions.
- 958.3 Petition for hearing.
- 958.4 Referral of complaint.
- 958.5 Scope of hearing; evidentiary standard.
- 958.6 Notice of docketing and hearing.
- 958.7 Hearing location.
- 958.8 Rights of parties.
- 958.9 Responsibilities and authority of presiding officer.
- 958.10 Prehearing conferences.
- 958.11 Respondent access to information.
- 958.12 Depositions; interrogatories; admission of facts; production and inspection of documents.
- 958.13 Sanctions.
- 958.14 Ex parte communications.
- 958.15 Post-hearing briefs.
- 958.16 Transcript of proceedings.
- 958.17 Initial decision.
- 958.18 Appeal of initial decision to Judicial Officer.
- 958.19 Form and filing of documents.
- 958.20 Service of notice of docketing and hearing, other documents.
- 958.21 Computation of time.
- 958.22 Continuances and extensions.
- 958.23 Settlement.

AUTHORITY: 39 U.S.C. 204; 39 U.S.C. 401; 39 U.S.C. 3001; 39 U.S.C. 3018.

SOURCE: 74 FR 18631, Apr. 24, 2009, unless otherwise noted.

### § 958.1 Purpose.

This part establishes the procedures governing the hearing and appeal rights of any person alleged to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

### § 958.2 Definitions.

As used in this part:

(a) *Complaint* refers to the determination by the Determining Official that

### § 958.3

an individual has violated the prohibition against mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

(b) *Initial Decision* refers to the written decision which the Presiding Officer renders.

(c) *Determining Official* refers to the Chief Postal Inspector or designee.

(d) *Judicial Officer* refers to the Judicial Officer or Acting Judicial Officer of the United States Postal Service or designee within the Judicial Officer Department.

(e) *Party* refers to the Postal Service or the respondent.

(f) *Person* refers to any individual, partnership, corporation, association, or private organization.

(g) *Presiding Officer* refers to an Administrative Law Judge designated by the Judicial Officer to conduct a hearing.

(h) *Recorder* refers to the Recorder of the Judicial Office of the United States Postal Service, 2101 Wilson Boulevard, Suite 600, Arlington, Virginia 22201-3078.

(i) *Representative* refers to an attorney or other advocate.

(j) *Respondent* refers to any person determined by the Determining Official to be liable for civil penalties, clean-up costs and/or damages for mailing hazardous materials and/or related violations under 39 U.S.C. 3018.

### § 958.3 Petition for hearing.

Within 30 days of being served the Postal Service's Complaint alleging liability under 39 U.S.C. 3018, the respondent may request a hearing by filing a written Hearing Petition with the Recorder. The respondent's Petition must include the following:

(a) The words "Petition for Hearing Related to Prohibitions Regarding the Mailing of Hazardous Material" or other words reasonably identifying it as such;

(b) The name of the respondent as well as his or her work and home addresses, and work and home telephone numbers; and other address and telephone number where the respondent may be contacted about the hearing proceedings;

### 39 CFR Ch. I (7-1-09 Edition)

(c) The date on which the respondent received the Complaint issued by the Determining Official;

(d) A statement indicating whether the respondent requests an oral hearing or a decision solely on the written record;

(e) If the respondent requests an oral hearing, a statement proposing a city for the hearing site, with justification for holding the hearing in that city, as well as recommended dates for the hearing; and

(f) A statement admitting or denying each of the allegations of liability made in the Complaint, and stating any defense on which the respondent intends to rely.

### § 958.4 Referral of complaint.

(a) If the respondent fails to request a hearing within the specified period, the Determining Official shall transmit the Complaint to the Judicial Officer for referral to a Presiding Officer, who shall issue an Initial Decision based upon the information contained in the Complaint.

(b) If the respondent files a Hearing Petition, the Determining Official, upon receiving a copy of the Petition, shall promptly transmit to the Presiding Officer a copy of the Postal Service's Complaint.

### § 958.5 Scope of hearing; evidentiary standard.

(a) A hearing under this part shall be conducted by the Presiding Officer on the record:

(1) To determine whether the respondent is liable under 39 U.S.C. 3018, and

(2) If so, to determine the amount of any civil penalties, clean-up costs and/or damages to be imposed.

(b) The Postal Service must prove its case against a respondent by a preponderance of the evidence.

(c) The parties may offer for insertion onto the record such relevant evidence as they deem appropriate and as would be admissible under the generally accepted rules of evidence applied in the courts of the United States in nonjury trials, subject, however, to the sound discretion of the Presiding Officer in supervising the extent and